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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: STRAUVEN, Yvan

Serial Number: 09/936,531

Art Unit: 1746

Filed: September 11, 2001

Examiner: Crepeau, Jonathan

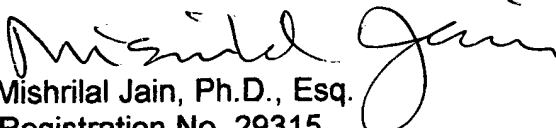
For: Alloy Powder for Alkaline Batteries

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

LETTER

In compliance with the Notice attached hereto, the applicant herewith provides a submission as required by 37 CFR 1.114.

Respectfully submitted,


Mishrilal Jain, Ph.D., Esq.
Registration No. 29315

11620 Masters Run
Ellicott City, MD. 21042
Tel. 410-715-4514

May 23, 2005



Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

APPLICATION NUMBER 09/936,531	FILING DATE 9/14/01	FIRST NAMED APPLICANT	ATTY DOCKET NO./TITLE
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09/936531

BEST AVAILABLE COPY

DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 2/14/05 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☒ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions about this notice to:

Harold Smith, Examining Group 1700

(300) 30 _____
FORM PTO-2051 (Rev. 3/2001)

571-272-1051

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Applicant: STRAUVEN, Yvan

Serial Number: 09/936,531

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For: Alloy Powder for Alkaline Batteries



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Examiner: Crepeau, Jonathan

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SUBMISSION

Responsive to the Office action dated October 14, 2004, applicant respectfully traverses rejection of claims 1-17 under 35 U.S.C 103(a) as being unpatentable over WO 94/19502 in view of JP 1-52379.

It may be pointed out that the instant invention is directed to a centrifugal atomized zinc alloy powder wherein the centrifugal atomizing process is carried out in a protective atmosphere of less than 4% oxygen content.

The Examiner acknowledges that the primary reference " '502 does not expressly teach that the centrifugal atomization process is carried out in an atmosphere with a relatively low (i.e., <4vol%) oxygen content..."

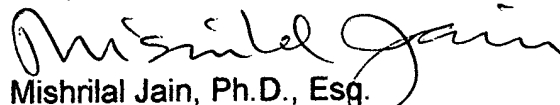
To cure this deficiency of the primary reference, the Examiner relies on the secondary reference '379 noting that (among other features) the secondary reference also discloses atomization. However, simply because atomization as a process is used in a reference, does not mean that one concerned with production of zinc alloy powders suitable for alkaline batteries, as in the instant invention, would look into any prior art which has nothing to do with such an objective, particularly to any prior art which employs toxicity prone mercury-amalgamated powders. It has been well settled that the mere fact that references can be combined does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination (emphasis supplied).

Acs Hospital Systems Inc. v Montefiore Hospital (CAFC 1984) 221 USPQ 929.

Citing references which merely indicate that isolated elements and/or features recited in the claims are known is not sufficient basis for concluding that combination of claimed elements would have been obvious (Ex parte Hiyamizu, BPAI 1988, 10 PQ2d 1393). Both the suggestion to make the claimed composition or carry out the claimed process and the reasonable expectation of success must be founded in the prior art, not in applicant's disclosure. In re Vaeck (CAFC 1991). 20 PQ2d 1438.

For the above reasons, the outstanding rejection of claims 1-17 under 35 U.S.C 103(a) is inapplicable and this rejection should be withdrawn.

Respectfully submitted,


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